

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF SOUTH DAKOTA

<p>MICHAEL NEAL CARPENTIER,</p> <p>Plaintiff,</p> <p>v.</p> <p>MITCHELL SCHOOL DISTRICT, NO. 17-2 OF DAVISON COUNTY, SOUTH DAKOTA, MITCHELL TECHNICAL COLLEGE, and MARK WILSON,</p> <p>Defendants.</p>	<p>Civil No.: 4:23-cv-4183</p> <p><b>COMPLAINT</b></p>
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**PARTIES**

1. Plaintiff, Michael Neal Carpentier, is a natural person, who resides at 2310 N. Foster Street, Mitchell, South Dakota, 57301. (Hereinafter referred to as “Plaintiff”.)
2. Mitchell School District, No. 17-2 of Davison County, South Dakota, is a local government unit existing as a school corporation under the laws of the State of South Dakota with its principal place of business at 821 North Capital, Mitchell, Davison County, South Dakota, 57301. (Hereinafter referred to as “MSD”.)
3. Mitchell Technical College is a South Dakota public postsecondary institution, with its principal place of business at 1800 East Spruce Street, Mitchell, South Dakota, 57301. (Hereinafter referred to as “MTC”.)
4. Mark Wilson, is a natural person, who is employed as President of MTC by MSD, and on information and belief, Defendant Wilson is a resident of Davison County,

South Dakota. At all times relevant hereto, he acted under color of state law. He is sued both in his individual and official capacity.

### **JURISDICTION**

5. This Court has jurisdiction over Plaintiff's federal claim under 28 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction over Plaintiff's second claim, which is based on state law, under 28 U.S.C. § 1367.
6. Venue in the United States District Court for the District of South Dakota is proper pursuant to 28 U.S.C. § 1391.

### **FACTUAL ALLEGATIONS**

7. Plaintiff was party to an annual employment contract as a Teacher with MSD and MTC.
8. The parties to the employment contract were Plaintiff, MSD, and MTC.
9. The employment contract covered a period of time beginning on August 1, 2022, and set to expire on July 31, 2023.
10. This employment contract was executed by Plaintiff, Mark Wilson, the MSD Superintendent, the MSD Business Manager, and the MSD Board President.
11. Plaintiff had been employed as a Teacher at MTC for a period in excess of five (5) years prior to October 12, 2022.
12. Over the course of the years prior to October 2022, Plaintiff reported numerous complaints to his supervisor at MTC that students were being sexually harassed by an instructor, that said instructor was touching the students in a sexually suggestive manner, that instructor was discussing his preference in pornography with the students, and that students were scared to be left alone with said instructor. Plaintiff

was informed by his supervisor that the students' complaints were hearsay, and that nothing needed to be done since students talk.

13. Students continued to report complaints to Plaintiff, and Plaintiff aided the students with information on the procedure for filing complaints with the Title XI Coordinator at MTC.

14. On or about October 7, 2022, Plaintiff was involved with a verbal altercation with the instructor herein described.

15. October 10, 2022, was a local, state, and federally recognized holiday by MSD and MTC.

16. On or about October 12, 2022, Plaintiff was instructed to report to a meeting with Mark Wilson. Plaintiff, Mark Wilson, and other representatives of MTC were present for the meeting.

17. During the meeting described in paragraph 15, Plaintiff was informed he was to resign his Teaching position. When Plaintiff would not agree to resign his position, Mark Wilson terminated Plaintiff's employment as a Teacher.

18. Prior to the meeting described in paragraph 15, Plaintiff was not provided with:

- a. Notice of intent to terminate employment,
- b. Notice the Plaintiff had the right to access his employment file,
- c. Notice that Plaintiff could request a hearing before the school board to present reasons why the termination should not occur, or
- d. Notice that Plaintiff had the right to representation at his own expense.

19. After the meeting described in paragraph 15, Plaintiff was not provided with:

- a. Notice the Plaintiff had the right to access his employment file,

- b. Notice that Plaintiff could request a hearing before the school board to present reasons why the termination should not occur, or
  - c. Notice that Plaintiff had the right to representation at his own expense.
20. After his termination, Plaintiff sought out assistance from a member of the MSD Board. Plaintiff informed the board member of the facts of his termination and asked for assistance with the matter. Plaintiff was informed board member would look into the matter and get back with Plaintiff. Plaintiff has not been provided further information from MSD board member.
21. As a proximate result of Defendants' actions, Plaintiff was deprived of his property, employment, compensation, leave. Stipend, salary, and other benefits of employment.

**FIRST CAUSE OF ACTION**

**42 U.S.C. § 1983**

22. Plaintiff repeats and realleges paragraphs 1 through 21 as if fully set forth herein.
23. Defendants at all times relevant to this action were acting under color of state law.
24. Defendants unlawfully deprived Plaintiff of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.
25. At all times relevant hereto, MTC President Mark Wilson acted pursuant to a policy or custom of MSD in depriving Teachers of property without:
- a. Notice of intent to terminate employment,
  - b. Notice the Teacher had the right to access his/her employment file,
  - c. Notice that Teacher could request a hearing before the school board to present reasons why the termination should not occur, or
  - d. Notice that Teacher had the right to representation at his/ own expense.

26. Each of the due process rights described herein are guaranteed to Teachers by South Dakota Codified Law.
27. Teachers have a property interest in employment in South Dakota.
28. Plaintiff notified MSD of the constitutional violation by President Mark Wilson, and MSD either participate in or condoned the conduct of President Mark Wilson.
29. MSD's policy or custom were a direct and proximate cause of the constitutional deprivation suffered by Plaintiff.

### **SECOND CAUSE OF ACTION**

#### **Wrongful Termination – Against Defendants MSD and MTC**

30. Plaintiff repeats and realleges paragraphs 1 through 21 as if fully set forth herein.
31. Plaintiff and Defendants MSD and MTC entered into a contract of employment for the period of August 1, 2022, through July 31, 2023, and which was an agreement to do something for the benefit of Defendants.
32. Plaintiff was employed by Defendants MTC and MSD as a Teacher.
33. Plaintiff was entitled to receive compensation pursuant to the contract of employment.
34. On information and belief, Defendants wrongfully terminated Plaintiff's employment in violation of the terms of the contract of employment and in retaliation for reporting allegations of sexual harassment.


**WHEREFORE** Plaintiff prays for the following relief:

1. On his first claim, a judgment for compensatory damages in an amount to be determined at trial, plus reasonable attorney fees, against all Defendants;
2. On his second claim, a judgment for compensatory damages in an amount to be determined at trial against Defendants MSD and MTC;

3. Declaration that Plaintiff be reinstated to his position as a Teacher with the MSD;
4. For allowable compensatory damages in a just and reasonable amount;
5. For allowable past and future special damages, according to proof;
6. For costs of the action and interest provided by law;
7. For such other relief as the Court deems just and proper;

PLAINTIFF DEMANDS A TRIAL BY JURY

Dated: November 3, 2023

Signed:   
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Michael D. Sharp, Esq.  
Attorney for Plaintiff  
The Sharp Firm, Prof. LLC  
PO Box 303  
Emery, SD 57332  
Office@TheSharpFirm.com  
(605) 550-3000  
SD Bar No. 4660

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

CARPENTIER, MICHAEL, NEAL

(b) County of Residence of First Listed Plaintiff Davison  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

The Sharp Firm, Prof., LLC  
PO Box 303, Emery, SD 57332 (605) 550-3000

## DEFENDANTS

MITCHELL SCHOOL DISTRICT, NO. 17-2 OF DAVISON  
COUNTY, SOUTH DAKOTA, et alCounty of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. § 1983

Brief description of cause:

Violation of Due Process Rights in Termination of Teacher and Supplemental Jurisdiction Request for state action Wrongful Termination

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

November 3, 2023

s/ Michael D. Sharp

## FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_